DANA CASSADORE, Appellant	:	Order Affirming Decision
v.	:	
	:	Docket No. IBIA 97-169-A
ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	February 4, 1999

Appellant Dana Cassadore seeks review of a July 2, 1997, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning a 60-day suspension of Appellant's general assistance for failure to "actively seek employment" as required by 25 C.F.R. § 20.21(i)(1). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant was receiving BIA general assistance through the Elko Band of the Te-Moak Tribe of Western Shoshone. Appellant applied for a position with the Te-Moak Housing Authority as a laborer. According to Appellant, he was one of seven applicants to be interviewed for two positions. He went to the Housing Authority office for his interview at 10 a.m. on March 27, 1997, but admits leaving prior to being interviewed. Two other applicants were hired.

Although the record indicates that the suspension was initially proposed by the Elko Band's Social Worker, it does not contain any documentation concerning the proposal. However, following a request from Appellant, Ortencia Puhuyaoma, the Social Worker for the Western Nevada Agency, BIA, held a hearing on the proposed suspension on May 20, 1997. On May 27, 1997, the Superintendent upheld the suspension of Appellant's general assistance.

Appellant appealed to the Area Director and filed a Statement of Reasons. On July 2, 1997, the Area Director affirmed the Superintendent's decision. The Area Director specifically stated that he had not considered Appellant's Statement of Reasons because it was not timely filed.

Appellant appealed to the Board. Both Appellant and the Area Director filed briefs on appeal.

Appellant devotes his Opening Brief to discussing the Area Director's allegedly erroneous calculation of the date his Statement of Reasons was due. The Area Director admits that she miscalculated the due date, and that the Statement of Reasons was actually timely. However, the

Area Director argues that her decision was based on an analysis of the relevant regulations, and her failure to consider the Statement of Reasons had no impact on the merits of the decision.

The Board has fully considered Appellant's Statement of Reasons to the Area Director in this appeal. It concludes that the Area Director's error in failing to consider Appellant's Statement of Reasons has been cured in this proceeding.

Appellant contends that the Superintendent was late in setting a date for his hearing. It appears possible that there was uncertainty as to whether the ten-day period established in 25 C.F.R. § 20.30(c) for responding to a request for a hearing began when the Band received the request or when the Superintendent received it. For purposes of this decision, the Board assumes, but does not decide, that the period began on April 18, 1997, the day Appellant submitted his request for a hearing to the Band. The Board makes this assumption in order to give Appellant the benefit of any doubt. Under this assumption, the ten-day period expired on April 28, 1997. The Superintendent responded to Appellant's request on April 29, 1997. Appellant contends that the Board should reinstate his general assistance because the Superintendent's "time to uphold the original decision had passed." Statement of Reasons at 4.

Appellant cites nothing in the regulations in support of his conclusion that the Superintendent's "time to uphold the original decision * * * passed" when the Superintendent failed to respond to the request for a hearing within ten days. Clearly, the regulation is intended to force prompt action on a request for a hearing. In this case, the hearing was held in a timely manner, after a ten-day extension requested by Appellant in accordance with 25 C.F.R. § 20.30(d)(5); and Appellant's general assistance benefits were continued through the hearing, as required by 25 C.F.R. § 20.30(b). The Board finds that Appellant suffered no harm because of the one-day late response. It concludes that, under the circumstances of this case, the Superintendent's late response constitutes harmless error.

Appellant objects to the fact that Puhuyaoma conducted the hearing. He contends that he was denied a fair hearing because he could not call Puhuyaoma as a witness to answer questions about the appeal process. The appeal process was not the subject of the hearing. Appellant has not shown why he needed to question Puhuyaoma about the appeal process under oath at the hearing, or any way in which he was prejudiced because he was unable to so question her. The Board rejects this argument.

Appellant quotes from page 5 of the hearing transcript in contending that Puhuyaoma had made her decision prior to the hearing. Appellant quotes Puhuyaoma as saying: "It sounds like to me like you are going to be dissatisfied [with the decision]." (Bracketed phrase added by Appellant.) The actual exchange was:

> Puhuyaoma: "* * * It sounds to me like you are going to be dissatisfied no matter what."
>
> Appellant: "Yeah, you mean if it is yes or reinstatement..."

Puhuyaoma: "That either or, it sounds like you are going to be dissatisfied."

Appellant: "You mean even if I get reinstated?"

Puhuyaoma: "That's the way it sounds."

Appellant: "Probably, because I am a big stickler for procedure and time limits because I have been involved in the court system here [at the Tribe] and they seem to disregard time limits and rules for all."

Hearing Tr. at 5-6.

The Board finds nothing in this exchange which supports Appellant's contention that Puhuyaoma had pre-judged his case.

Appellant argues that he was not provided information and assistance which he requested. Appellant was notified that Puhuyaoma would provide him with assistance on his appeal and that he could obtain the information he had requested from the Band. Appellant has not shown that he followed through with either of his requests. The Board rejects this argument.

Appellant contends that he was denied due process and a fair hearing because the Superintendent issued the decision but did not attend the hearing. 25 C.F.R. § 20.30(e) provides that "[t]he Superintendent or his designated representative shall conduct the hearing" and subsec. 20.30(f) states that "[t]he Superintendent or his designated representative shall render a written decision within 10 days of the completion of the hearing." The regulations do not require that the decision be rendered only by the person who presided at the hearing, or require the Superintendent's attendance at a hearing presided over by a designated representative. The Superintendent's decision shows that he reviewed the hearing transcript. Because Appellant has failed even to allege any way in which he was prejudiced by the fact that the Superintendent did not attend the hearing, the Board rejects this argument.

As to the merits of the decision, Appellant argues that the word "seek" is not defined in the regulations. As he has throughout this proceeding, Appellant contends that he "actively [sought] employment" within the meaning of 25 C.F.R. § 20.21(i)(1) because he went for the interview, that he did not refuse employment because no employment was ever offered to him, and that the regulations do not require that a general assistance applicant or recipient carry through on a job interview. He contends that the interviews should have been scheduled at specific times for each applicant, rather than having all applicants arrive at 10 a.m., with some having to wait while others were interviewed. Appellant asserts that the Housing Authority wasted his time, and that he had another appointment he needed to keep. The Elko Band Social Worker stated at the hearing that the Band's normal policy is also to schedule interviews at the same time and that people wait their turn to be interviewed. Hearing Tr. at 4. Appellant responded: "But they usually set their interviews during their meetings in the evening. This was during the day time,

10:00 o'clock in the morning." Id. Appellant continued: "Housing * * * could have wrote that in their letter saying that you...the scheduled appointments may take between 10:00 - 12:00 o'clock. And, I did my best to sit there and I did my best to wait. I waited for the first half hour and I thought maybe that I was going to get in the third person interviewed, but no, somebody else was called." Id.

25 C.F.R. § 20.21(i)(1) provides: "An applicant or recipient must actively seek employment * * *." The subsection lists ten circumstances under which an applicant or recipient is not required to seek or accept employment. Appellant has not contended that any of these ten circumstances apply to him, and none of them appear to apply.

The regulations are not required to define every word. Words not specifically defined are given their common meaning. The word "seek" is defined in the American Heritage Dictionary of the English Language (New College Ed., 1976) as "to try to locate or discover; search for" and "to endeavor to obtain or reach." In the context of this case, the Board concludes that a person does not "try to locate" or "endeavor to obtain" employment by showing up for a job interview, but leaving before the interview takes place. The Board rejects Appellant's argument that merely showing up at the interview site meets the requirements of 25 C.F.R. § 20.21(i)(1) for "actively seek[ing] employment." It further rejects his arguments that BIA's use of the common meaning of the word "seek" is an unlawful attempt to amend the regulations.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Phoenix Area Director's July 2, 1997, decision is affirmed. 1/

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

1/ Arguments not specifically addressed were considered and rejected.